

Message Text

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PAGE 01 STATE 216996
ORIGIN L-03

INFO OCT-01 NEA-10 ISO-00 JUSE-00 CA-01 SCS-06 /021 R

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-NBA/IAI:MDEAN

JUSTICE - M. STEIN (INFO)

JUSTICE - M. STEIN (INFO)

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R 252043Z AUG 78

FM SECSTATE WASHDC

TO AMEMBASSY TEL AVIV

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E.O. 11652: N/A

TAGS:PDIP, IS

SUBJECT: ISRAELI REQUEST TO AMEND EXTRADITION TREATY

REF: TEL AVIV 8543

1) DEPARTMENT HAS NOT RECEIVED FURTHER INFORMATION ON THE NEW YORK CRIMINAL PROCEEDING WHICH MIGHT EXEMPLIFY HOW RECENT ISRAELI LEGISLATION COULD BE EXPLOITED BY PERSONS WHO, ACCUSED OF CRIME IN THE U.S., GO TO ISRAEL TO GAIN ISRAELI NATIONALITY. EMBASSY IS THEREFORE INSTRUCTED TO BEGIN DISCUSSIONS ON AMENDMENTS TO U.S.-ISRAELI EXTRADITION TREATY.

2) BACKGROUND: PURSUANT TO THE RECENT AMENDMENTS TO THE OFFENSES COMMITTED ABROAD LAW (5738-1978) ISRAEL IS TAKING EXTRA-TERRITORIAL JURISDICTION OVER OFFENSES COMMITTED BY BOTH HER OWN NATIONALS AND NON-NATIONALS WHO ARE RESIDENT IN ISRAEL. THE NEW LAW ALSO PERMITS ISRAEL TO GIVE EFFECT TO UNCOMPLETED SENTENCES IMPOSED ABROAD FOR EXTRADITABLE
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PAGE 02 STATE 216996

OFFENSES WHERE EITHER AN ISRAELI NATIONAL OR RESIDENT IS INVOLVED. SECTION 2 OF THE AMENDMENTS LEGISLATION, HOWEVER, ALSO AMENDS THE ISRAELI EXTRADITION LAW.

THE NEW EXTRADITION PROVISION STATES THAT "AN ISRAELI NATIONAL SHALL NOT BE EXTRADITED SAVE FOR AN OFFENSE COMMITTED BEFORE HE BECAME AN ISRAELI NATIONAL." THIS PROVI-

SION DIRECTLY AFFECTS THE CURRENT U.S.-ISRAEL EXTRADITION TREATY (TIAS 5476, ENTERED INTO FORCE 12/5/63), I.E., ARTICLE IV OF THE TREATY STATES THAT "A REQUESTED PARTY SHALL NOT DECLINE TO EXTRADITE A PERSON SOUGHT BECAUSE SUCH PERSON IS A NATIONAL OF THE REQUESTED STATE." THE NEW LEGISLATION RESTRICTS ISRAEL FROM EXTRADITING ISRAELI NATIONALS TO THE UNITED STATES WHERE THE PERSON WAS AN ISRAELI NATIONAL AT THE TIME OF THE OFFENSE. THE NEW LEGISLATION, HOWEVER, DOES NOT LIMIT ISRAEL'S AUTHORITY TO EXTRADITE PERSONS WHO WERE NOT ISRAELI NATIONALS AT THE TIME OF THE OFFENSE.

3) THE DEPARTMENT HAS REVIEWED THE LANGUAGE OF THE PROPOSED AMENDMENT TO ISRAEL-UK EXTRADITION TREATY DISCUSSED IN REF-TEL (TEL AVIV 8543). THIS AMENDMENT IS NOT ACCEPTABLE.

4) FIRST, SUCH LANGUAGE IN A U.S.-ISRAEL TREATY WOULD BE INEFFECTIVE UNDER U.S. LAW (VALENTINE V. UNITED STATES 299 U.S. 5). UNDER U.S. LAW, THERE CAN BE NO EXECUTIVE DISCRETION TO SURRENDER A FUGITIVE TO A FOREIGN GOVERNMENT UNLESS THAT DISCRETION IS GRANTED BY LAW (I.E. BY TREATY OR STATUTE). THE PROPOSED AMENDMENT IS SILENT AS TO EXECUTIVE DISCRETION. HENCE, WE WOULD BE UNABLE TO EXTRADITE A U.S. CITIZEN TO ISRAEL EVEN IF WE WISHED TO DO SO.

5) SECONDLY, THE ISRAELI PROPOSED AMENDMENT DOES NOT ADE-
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PAGE 03 STATE 216996

QUATELY CHARACTERIZE THE DISCRETIONARY AUTHORITY AVAILABLE TO ISRAEL. WHILE THE PROPOSED AMENDMENT STATES THAT ISRAEL SHALL "NOT BE OBLIGED TO EXTRADITE A NATIONAL OF ISRAEL", IT DOES NOT REFLECT THE IMPLIED AUTHORITY SET FORTH IN THE RECENT LEGISLATION, I.E., THAT AN ISRAELI NATIONAL NOT BE EXTRADITED" SAVE FOR AN OFFENSE COMMITTED BEFORE HE BECAME AN ISRAELI NATIONAL." WE BELIEVE THAT THE FLEXIBILITY PERMITTED BY THE LAW SHOULD BE REFLECTED IN THE TREATY BECAUSE, EVEN WITH ISRAEL BEARING THE COST OF TRANSPORTING WITNESSES, THE LOGISTICS OF TRIAL IN ISRAEL, PARTICULARLY IN COMPLI-CATED FRAUD CASES, MAKE SUCCESSFUL PROSECUTION DOUBTFUL.

6) TO AVOID POSSIBLE LEGAL INFIRMITIES ASSOCIATED WITH THE ISRAELI PROPOSAL AS DISCUSSED IN PARAGRAPH 4 ABOVE, AND TO PROPERLY REFLECT THE DISCRETIONARY AUTHORITY OF ISRAEL TO EXTRADITE PERSONS HAVING COMMITTED OFFENSES PRIOR TO RECEIVING ISRAELI NATIONALITY, THE FOLLOWING LANGUAGE MAY BE PROPOSED: (THE CURRENT U.S.-ISRAEL EXTRADITION TREATY TO BE AMENDED ACCORDINGLY)

"ARTICLE IV

1. NEITHER PARTY SHALL BE BOUND TO EXTRADITE ITS OWN NATIONALS, BUT THE EXECUTIVE AUTHORITY OF THAT PARTY SHALL,

IN ITS DISCRETION, HAVE THE POWER TO SURRENDER ITS NATIONALS IN THE CASE OF PERSONS WHO DID NOT HAVE THE NATIONALITY OF THE REQUESTED PARTY WHEN THE OFFENSE WAS COMMITTED FOR WHICH EXTRADITION IS SOUGHT, THE REQUESTED PARTY SHALL NOT DECLINE EXTRADITION BECAUSE SUCH PERSON SUBSEQUENTLY ACQUIRED THAT NATIONALITY. -

2, IF A REQUEST FOR EXTRADITION IS REFUSED ONLY ON THE GROUND THAT THE PERSON SOUGHT IS A NATIONAL OF THE REQUESTED PARTY, THAT PARTY SHALL TAKE ALL APPROPRIATE MEASURES IN ACCORDANCE WITH ITS OWN LAW TO PROSECUTE THE PER-

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PAGE 04 STATE 216996

SON CLAIMED. FOR THIS PURPOSE, ANY FILES, DOCUMENTS AND EXHIBITS REQUIRED FOR THE PROSECUTION SHALL BE TRANSMITTED TO THE REQUESTED PARTY AND ALL EXPENSES INCURRED IN CONNECTION WITH PROCEEDINGS TAKEN UNDER THIS PARAGRAPH, INCLUDING TRANSLATION OF DOCUMENTS, TRAVEL EXPENSES OF WITNESSES AND OTHER COSTS RELATED IN ANY MANNER TO THE PROSECUTION, SHALL BE BORNE BY THE REQUESTED PARTY. THE REQUESTING PARTY SHALL BE INFORMED OF THE RESULTS OF THE PROSECUTION."

7) (NOTE: PARAGRAPH 2 OF DEPARTMENT'S SUGGESTED TEXT IS VIRTUALLY THE SAME AS THAT SUGGESTED TO ISRAEL BY CANADA).

8) ADVISE DEPARTMENT ON ISRAELI RESPONSE TO U.S. PROPOSAL. CHRISTOPHER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: EXTRADITION AGREEMENTS, NEGOTIATIONS, AMENDMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 25 aug 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978STATE216996
Document Source: CORE
Document Unique ID: 00
Drafter: TJRAMSEY:SCH
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780349-0771
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780822/aaaaasaf.tel
Line Count: 150
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: ab47755b-c288-dd11-92da-001cc4696bcc
Office: ORIGIN L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 78 TEL AVIV 8543
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1616626
Secure: OPEN
Status: NATIVE
Subject: ISRAELI REQUEST TO AMEND EXTRADITION TREATY
TAGS: PDIP, IS
To: TEL AVIV
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/ab47755b-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014